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10/674,597	09/30/2003	Frank Colletti	COLLETTI-1	5540
38563 7590 02/03/2009 DAVID J. DETOFFOL, ESQ., P.C. 305 BROADWAY, SUITE 1101 NEW YORK, NY 10007				
EXAMINER TOMPKINS, ALISSA JILL				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,597
Filing Date: September 30, 2003
Appellant(s): COLLETTI ET AL.

David J. DeToffol

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/25/2007 appealing from the Office action mailed 9/19/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,300,240	Edwards	1981
891,122	Wilcox	1908

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (U.S. 4,300,240) in view of Wilcox (U.S. 891,122). Edwards discloses a cold weather mask 10 formed of a nylon laminate-type cloth (Column 1, line 54- Column 2,

line 14). The mask is sized and shaped to fit snugly about the face of the wearer. The mask extends over the cheeks to the left and right ear areas 14. The upper edge 16 extends over the bridge of the nose along the lower part of the eyes 22. The lower edge 18 extends along the intersection of the neck with the underside of the jaw (Column 1, 32-40)(Figure 1). The face member 10 has aperture means 34 formed proximate the nostrils of the nose allowing air to pass through. Aperture means 50 are also located around the mouth 51 in the form of a plurality of small holes 52 allowing the passage of air between the interior and exterior of the face member (Column 4, 1-15). The left and right ear sections have apertures, which allow air and sound to pass through. The mask is secured to the wearer by a securing strap 60 and 62 having securing sections 80 and 81 that extend and fasten at the back of the head at the base of the skull (Column 3, 64-68). However, Edwards does not show a mask having a top perimeter where the top of the forehead meets the scalp and also includes apertures for the eyes. Wilcox discloses a face protector made of a pliable material that is sized to wholly cover the face of the wearer (Column 1, 30-32). The face mask comprises eye-holes 2, a mouth opening 3, ear openings 4, and a strap 5 designed to extend from side to side and engage at the back of the head (Column 1, 30-41). The top perimeter of the mask is located along the juncture of where the top of the forehead meets the scalp. A crown member 5 is also shown, which extends upward from the top perimeter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wilcox to modify Edwards in order to provide a face protector

that will effectively protect the wearer's face, eyes, and nose without causing any discomfort.

As for claims 5-7, Edwards states a method of manufacturing a mask including using an appropriate die to cut from a quantity of nylon laminate cloth. The same die or a second die may be used to form the second aperture while sewing is used to form the seams. The method of fabricating a face mask including the steps of supplying material and at least one cutting means to produce the device claimed is therefore obvious over the prior art made of record. There is no additional function associated with the cutting means limitation.

(10) Response to Argument

Appellant submits that the combined device of Wilcox and Edwards, even if capable of functioning as the appellants invention has achieved, would destroy their intended function of applying pressure on the nose to hold their mask secure. Appellant's claim language requires a mask member that is sized and shaped to fit snugly about the forehead, face, gullet, and ears of a user. Edwards discloses a cold weather mask that is sized and shaped to fit snugly about the face of the wearer. The mask of Edwards does not extend upward to a top perimeter where the top of the forehead meets the scalp. Wilcox teaches a face protector that does extend upward to a top perimeter. Wilcox also has eye-holes 2, a mouth opening 3, ear openings 4, and a strap 5 to engage at the back of the head. The device of Wilcox and Edwards would

not destroy the intended function. The device is capable of performing in the manner recited by the appellant. Moreover, the structure of Edwards and Wilcox meets all of the claim limitations presented by the appellant.

The appellant places emphasis on the "vee" design, and argues the way in which the invention is intended to function. As noted above, the device of Edwards and Wilcox meets all of the structural limitations that are presented by the appellant and therefore the device is capable of performing in the manner cited.

Appellant submits that Edwards and Wilcox each teach face protection in cooperation with other clothing articles to secure their mask. Appellant argues that this restricts vigorous head movement activities by the wearer. Again, the Appellant is arguing the way in which these devices would function. The claim language does not restrict the face mask from being used with any other clothing articles. The mask of Edwards can be used in a cold weather climate, such as when skiing. In this case, it would be obvious and well known to cover the entire face of a wearer to protect it from the cold and harsh environment. Using the devices of Edwards or Wilcox with a clothing article would not restrict vigorous head movement activities by the wearer. As noted above, the device of Edwards and Wilcox meets all of the structural limitations that are presented by the appellant and therefore the device is capable of performing in the manner cited.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,
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